

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4

5 DAVID DAVIES d/b/a DAVIES HOME)
6 SERVICES, individually and as)
7 the representative of a class)
8 of similarly-situated persons,)

9 Plaintiffs,)

10 vs.)

No. 13-cv-03546

11 W.W. GRAINGER, INC., and)
12 JOHN DOES 1-12,)
13 Defendants.)

14
15 The videotaped deposition of DAVID DAVIES,
16 taken before Maria S. Winn, CSR, RPR and CRR,
17 pursuant to the Federal Rules of Civil Procedure
18 for the United States District Courts pertaining
19 to the taking of depositions, at Winston & Strawn,
20 LLP, 35 West Wacker Drive, Suite 3500, Chicago,
21 Illinois, commencing at 10:27 a.m. on November 6,
22 2013.
23
24

1 PRESENT:

2
3 BOCK & HATCH, LLC
4 By MR. JAMES M. SMITH
5 134 North LaSalle Street - Suite 1000
6 Chicago, Illinois 60602
7 (312) 658-5500
8 jim@bockhatchllc.com

9 appeared on behalf of the Plaintiff;

10 WINSTON & STRAWN, LLP
11 By MR. KIMBALL R. ANDERSON
12 35 West Wacker Drive - Suite 4600
13 Chicago, Illinois 60601
14 (312) 558-5600
15 kanderson@winston.com

16 appeared on behalf of the Defendant;

17 ALSO PRESENT:

18 MS. AIMEE M. NOLAN,
19 W.W. Grainger, Inc.
20 Associate General Counsel;
21 MR. MATTHEW O'HARA, Legal Videographer.
22
23
24

I N D E X

WITNESS

David Davies

EXAMINED BY

Mr. Anderson

PAGE

5

DEPOSITION EXHIBITS

Exhibit No. 1

31

(1-page document

\$25 off ad from fax)

Exhibit No. 2

40

(10-page document

6/7/13 Email chain with attachments)

Exhibit No. 3

98

(DAVIES 001 - 018

"Detail of Directory Advertising")

1 THE VIDEOGRAPHER: Good morning, my name
2 is Matt O'Hara, representing Veritext. The
3 date today is November 6, the time is
4 approximately 10:27 a.m.

5 This deposition is being held in the
6 office of Winston & Strawn, LLP, located at
7 35 West Wacker Drive.

8 The caption of this case is David Davies
9 versus W. W. Grainger, Inc., in the United
10 States District Court for the Northern
11 District of Illinois.

12 The name of the witness is David Davies.

13 At this time, the attorneys will identify
14 themselves and the parties they represent,
15 after which our court reporter, Maria Winn of
16 Veritext, will swear in the witness and we can
17 proceed.

18 MR. ANDERSON: All right. Good morning.
19 I'm Kimball Anderson, and I represent
20 W.W. Grainger, Inc., the defendant in the
21 case.

22 MR. SMITH: I'm Jim Smith, I represent
23 the plaintiff, I work with the firm of Bock &
24 Hatch.

1 DAVID DAVIES,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. ANDERSON:

6 Q Okay. Mr. Davies, would you give us your
7 full name and address, please?

8 A David Davies 1118 West Crescent Avenue,
9 in Park Ridge, Illinois.

10 Q So Mr. Davies, as you know, the
11 deposition was scheduled to start at 10:00 today,
12 and you arrived about a half hour late.

13 Did you have some problem getting here?

14 A I did. The Kennedy expressway was backed
15 up. It took two hours to get here.

16 Q I see. And do you have a cell phone?

17 A I do.

18 Q Is it working?

19 A It is.

20 Q Okay. Did you call anybody?

21 A I did.

22 Q Okay. Who did you call?

23 A I called my attorney.

24 Q I see.

1 All right. Well, you kept all of us
2 waiting, as you can see. Why don't we try to get
3 started today.

4 MR. SMITH: While we're on the topic, for
5 the record, I emailed Norm Beck, who has been
6 the attorney I've been working with on this
7 case almost exclusively, that we would be 15
8 to 20 minutes late, and we were about 20
9 minutes late. We were down in the lobby
10 downstairs for about five minutes waiting for
11 somebody to come get us.

12 So I think the dep started at 10:27
13 instead of 10:00, and we apologize for the
14 delay.

15 MR. ANDERSON: When did you e-mail
16 Mr. Beck?

17 MR. SMITH: This morning, probably around
18 9:15.

19 MR. ANDERSON: I see.

20 BY MR. ANDERSON:

21 Q Okay. So, Mr. Davies, you understand
22 that you're under oath today, and swore to tell
23 the truth, the whole truth and nothing but the
24 truth?

1 A I do.

2 Q All right. And are you married?

3 A I am.

4 Q What's your wife's name?

5 A Gloria.

6 Q Does she live with you?

7 A She does.

8 Q Okay. Do you have children?

9 A I do.

10 Q What's your educational background?

11 A I graduated high school, I went to Triton
12 College for two years, and went to Washburne Trade
13 School for four years.

14 Q Okay. Do you have any degrees?

15 A I do.

16 Q What are those?

17 A I think it is a bachelor of science for
18 construction tech.

19 Q When did you obtain that degree?

20 (Cell phone interruption)

21 A Oh, excuse me, I should turn that off, I
22 apologize. Actually, it should be off.

23 I believe I graduated in '78.

24 Q And that was from Triton?

1 A Triton College.

2 Q Triton College.

3 What's your date of birth?

4 A October 18, 1958.

5 Q All right. And you operate a business
6 called Davies Home Services; is that correct?

7 A Yes.

8 Q And is that an incorporated business?

9 A Sole proprietorship.

10 Q So you're not a corporation, you're not a
11 partnership. You just run it as a sole
12 proprietorship?

13 A Correct.

14 Q And what is the nature of that business?

15 A I'm a general contractor.

16 Q And what kind of general contracting do
17 you do?

18 A We do complete home remodeling and some
19 light commercial work as well.

20 Q How long have you been in business?

21 A 28 years.

22 Q Always operating under the same trade
23 name, Davies Home Services?

24 A Yes.

1 Q Do you have any employees?

2 A I have five full-time employees.

3 Q And what business address do you use?

4 A 824, Unit A, Busse Highway, in Park
5 Ridge.

6 Q I'm sorry. Could you give that to me
7 again?

8 A 825, A, Busse Highway, Park Ridge.

9 Q And how long have you been at that
10 address?

11 A I think about 15 years.

12 Q Okay. Have you ever been arrested or
13 convicted of a crime, Mr. Davies?

14 A I have never been convicted of a crime.
15 I was arrested once.

16 Q What was that for?

17 A I was driving with a nonvalid driver's
18 license, and I wasn't aware of it.

19 Q Okay. And have you been a party to a
20 lawsuit other than a party to a Telephone Consumer
21 Practices Act case, which we're going to get to in
22 a minute?

23 A I have.

24 Q And tell me about that.

1 A One of them involved a -- I did a job for
2 a customer, and when we got done, he didn't pay in
3 full. So we took him to court.

4 Q Who was the customer?

5 A Mr. Greenberg.

6 Q What's his first name?

7 A It was many years ago, I don't -- David,
8 I think.

9 Q Okay. And then what happened with the
10 lawsuit?

11 A We had our court date, the judge
12 basically split it in half, what he owed me. So
13 he paid half.

14 Q Did you have a trial?

15 A I think it was more of an arbitration.
16 I'm not sure what they call it.

17 Q Okay. Any other litigation other than
18 Telephone Consumer Act cases?

19 A I was involved in an arbitration for --
20 we had booked a house to stay in for the week, and
21 when we got there, the house was not what they had
22 said it would be. So we canceled the contract,
23 and they didn't refund my money. So we went to an
24 arbitration to get that settled.

1 Q And how did that end?

2 A They didn't refund my money, even though
3 the contract said they should have.

4 Q So you lost, basically?

5 A Yes. Well, I could have gone on, but I
6 chose not to.

7 Q Sure. Who is David Szymanski,
8 S-z-y-m-a-n-s-k-i?

9 A I don't know.

10 Q Has he ever been associated with your
11 business?

12 A No.

13 Q Do you have anyone in your business,
14 other than you, who acts as an officer of the
15 company, or a manager of the company?

16 A No.

17 Q You're basically the boss?

18 A Um-hm.

19 Q One rule of the road here, is that you'll
20 need to answer yes or no with a word --

21 A Yes.

22 Q -- as opposed to --

23 A Sorry.

24 Q Just because the court reporter is not

1 going to be able to accurately record your
2 response.

3 A Understood.

4 Q Okay. A couple other the rules of the
5 road, which I'll try to respect. One of which is,
6 I will try to wait to begin my question until
7 you've finished your answer.

8 A Okay.

9 Q And another important thing for you to do
10 is, you should wait to start your answer until I
11 finish my question, for the obvious reason is that
12 we don't both want to be talking on top of each
13 other.

14 If we're talking on top of each other,
15 the court reporter cannot record accurately what
16 either one of us are saying.

17 So if you would wait a little bit until
18 I've completed my question, I'll try to wait to
19 begin my question until you've finished your
20 answer. Okay?

21 A I'll do my best.

22 Q All right. Thanks.

23 And have you given a deposition like this
24 before?

1 A No.

2 Q This is your first time?

3 A Yes.

4 Q Okay. And in your home and commercial
5 remodeling business, how do you market the
6 business?

7 A We have an advertisement in the telephone
8 book, that's with DEX.

9 Q The Yellow Pages?

10 A Yes. There is a lot of Yellow Pages out
11 there, so that's confusing, but I know of them as
12 DEX.

13 Q Okay. Sure. Fair enough.

14 And do you use any other media to market
15 your services?

16 A I don't think it's considered media, but
17 we have signs in front of our jobs.

18 We have also been in a book recently,
19 called Home Pages, that just targets Park Ridge.
20 We've been in there a couple years.

21 Q What is Home Pages? I'm not familiar
22 with that.

23 A It's more of a localized book, larger
24 print, smaller book, so people feel like -- it's

1 supposed to be mostly local people.

2 It spreads out a little bit to other
3 suburbs, but that's what attracted me to it,
4 because I mainly target Park Ridge.

5 Q I see. So is it like a Yellow Pages for
6 the Park Ridge area?

7 A Yeah, a much smaller version.

8 Q Okay. And how many years have you been
9 advertising in that Home Pages book?

10 A I believe two.

11 Q And does your company have a fax machine?

12 A We do.

13 Q Where is it located?

14 A On my desk.

15 Q So right there on Busse Highway in your
16 office?

17 A Correct.

18 Q Okay. And how do you use the fax
19 machine?

20 A Well, we don't use it a lot anymore. But
21 it was intended, so when a customer wants to sign
22 a contract and send it to me, they can send it
23 through the fax rather than mailing it.

24 Q And have you used the fax for marketing

1 your own services?

2 A No.

3 Q And what is the phone number for your fax
4 machine?

5 A (847) 825-3741.

6 Q And how long have you had that phone
7 number for your fax machine?

8 A About 28 years.

9 Q That may be approaching a record. I have
10 been at Winston & Strawn for 36 years and I've had
11 the same phone number, (312) 558-5858, so...

12 And what other phone numbers do you have
13 for your business, in addition to this
14 (847) 825-3741?

15 A Our main line is (847) 825-3738.

16 Q And have you that main line number for
17 28 years as well?

18 A I have, yes.

19 Q Okay. And let me just ask you a few
20 other general background questions about your
21 business. And by the content of the questions, I
22 don't mean to infer anything, they're just
23 standard questions.

24 Has your company or business ever been

1 through a bankruptcy?

2 A No.

3 Q And have you ever had any disputes or
4 complaints with the Better Business Bureau, the
5 Illinois Attorney General, or any other agency
6 that regulates the conduct of businesses in the
7 State of Illinois?

8 A The only one I can think of, is the
9 Better Business Bureau contacted me once.

10 A lady had given us a deposit to do a
11 job, her soon-to-be ex-husband objected to that.
12 And rather than asking for the money back, he
13 contacted the Better Business Bureau. They
14 contacted me, I refunded the deposit and we never
15 did the work for them.

16 Q Um-hm. And has the nature of the
17 business always been the same over the 28 years,
18 namely, mostly home remodeling?

19 A Yes.

20 Q Okay. Do you do any new construction or
21 anything like that?

22 A New garages, you know. We haven't built
23 any new houses or anything like that, no.

24 Q And you do some small commercial

1 renovation as well; do I have that correct?

2 A Yes, we do offices.

3 Q I see. So I think we covered your type
4 of customers.

5 How about suppliers? Who are the
6 suppliers that you regularly do business with?

7 A Mainly Menards, Home Depot, Richards
8 Supply, sometimes ABC Supply, Ace Hardware. Those
9 are the main ones.

10 Q Okay. And what types of supplies do you
11 typically purchase from those suppliers?

12 A Construction materials and things to
13 remodel kitchens and bathrooms.

14 Q Okay. And you've also reached out to my
15 client, W.W. Grainger for supplies for your
16 business. Am I right about that?

17 A I'm not really a customer of theirs, no.

18 Q Why would you say that?

19 A It's very rare I've been in there -- I've
20 been in their business. It's not -- they don't
21 quite sell what I need.

22 I did go in there once looking for a
23 generator, because nobody else had one, because
24 the power was out everywhere, but they didn't

1 have any.

2 Q But you have purchased supplies from
3 W.W. Grainger over the course of your business,
4 correct?

5 A I think maybe 15 years ago I bought a
6 motor for my exhaust fan at my office. That's all
7 I recall buying from them.

8 Q All right. Well, I'll show you some
9 others in a minute. Maybe that will refresh your
10 recollection.

11 A Okay.

12 Q In how many Telephone Consumer Practice
13 Act cases are you a plaintiff?

14 A I believe 15.

15 Q 15, did you say, or 5-0?

16 A 1-5.

17 Q 1-5. And are all of those cases pending
18 here in Chicago, or some elsewhere?

19 A They're all here.

20 Q Okay. When did you start becoming a
21 plaintiff in Telephone Consumer Practice Act
22 cases?

23 A I think it's been about a couple months.

24 Q And how is it that you became a serial

1 plaintiff in Telephone Consumer Practice Act
2 cases?

3 A I'm just tired of getting them -- I have
4 to pay for the paper, I have to pay for the ink,
5 and I just started putting them aside. Every time
6 they came, I just put it underneath the table the
7 fax machine is on, and I couldn't believe how many
8 I'd gotten. It just doesn't seem right.

9 Q So you've been saving up incoming faxes
10 for years. Is that your testimony, Mr. Davies?

11 A I think for about two years, I just
12 started setting them aside.

13 Q Why?

14 A Just because it was aggravating me. I
15 wanted to see how much paper and ink I go through
16 at someone else's -- for someone else's benefit.

17 Q Okay. Well, have you quantified that,
18 either the paper or the ink?

19 A I'm not sure I understand your question.

20 Q Well, I hear you complaining about paper
21 and ink, which strikes me as a bit silly. But if
22 you quantified the amount of paper or ink that you
23 believe you've consumed, I'd be anxious to hear
24 that.

1 Have you quantified it?

2 A I never counted up how much I've actually
3 gone through. It's hard to say, because I'm using
4 paper and ink all the time. But I know every time
5 I have to buy ink, it's frustrating as it is, it's
6 expensive, and I don't need to pay for someone
7 else's advertising.

8 Q I see. But you haven't quantified in any
9 sense the ink that you say that you are spending
10 on receiving somebody else's fax. Am I right
11 about that?

12 A There is no way to tell how much ink is
13 on each fax.

14 Q Okay. The same thing with paper, right?

15 A Well, I've got a stack of the paper,
16 several reams worth, but...

17 Q When did you start collecting incoming
18 faxes, Mr. Davies?

19 A About -- approximately two years ago.

20 Q And you say you found this -- I forget
21 the word you used, aggravating?

22 A Aggravating, yeah.

23 Q Okay. Well, if this was so aggravating,
24 why didn't you call somebody up and say, please

1 stop sending me the faxes?

2 MR. SMITH: Objection to form, assumes
3 facts not in evidence.

4 BY MR. ANDERSON:

5 Q Did you? Did you ever do that, in two
6 years of collecting -- you say you've been
7 collecting these faxes for two years.

8 Did you ever call anybody up and say,
9 Please stop?

10 A I did.

11 Q For who did you do that?

12 A A lot of them. There's -- usually on the
13 bottom of the fax, it says, If you received this
14 fax in error, call this number to get off the
15 list.

16 So I did that for quite a few of them,
17 but it didn't slow the faxes down. And then
18 someone along the line said that they had heard,
19 by doing that, it shows a response -- it's a
20 response, even if it's negative, and it puts you
21 on more lists for people to send me faxes.
22 Whether that's true or not, I don't know.

23 Q I see. So for a while, you were reading
24 all the faxes with the opt-out notices, and you

1 were actually calling people up and opting out; is
2 that right?

3 A I did try to do that.

4 Q Okay.

5 A It didn't seem to help.

6 Q We don't have any record of you doing
7 that with W.W. Grainger. Do you believe you did
8 that with W.W. Grainger?

9 A No.

10 Q Okay. So for W. W. Grainger, you don't
11 have any recollection of calling them up and
12 saying, Don't send anymore faxes.

13 And you don't have any record of faxing
14 them or e-mailing them or communicating in any way
15 whatsoever, whether or not they should continue
16 faxing you. Right?

17 A I only did those calls initially when I
18 started getting a lot of them. It didn't help, so
19 I stopped doing those calls. And Grainger's, I
20 believe, is one of the more recent ones that I
21 received.

22 Q So do you have in your possession, at
23 your offices, these reams of faxes that you've
24 been collecting?

1 A I do.

2 Q Okay. Well, please don't discard those,
3 okay? Would you preserve those?

4 A I will.

5 Q And I heard you say that in some
6 instance, you called the sender and asked to be
7 taken off the list. Did you ever fax, e-mail or
8 just send an old fashioned letter, making that
9 same type of request, namely, to take you off any
10 fax marketing list?

11 A No.

12 Q So it was always phone calls?

13 A Yes.

14 Q And it was always in response to that
15 opt-out notice that you saw at the bottom of the
16 faxes?

17 A Yes.

18 Q Okay. So have you become a serial
19 plaintiff in these Telephone Consumer Practice Act
20 cases, 15 or so of them, out of some desire to
21 make some kind of statement, or are you in it for
22 the money, or for both?

23 MR. SMITH: I'll object to the form of
24 the question, vague. And particularly what

1 the word "serial" means, with respect to
2 defining the plaintiff.

3 BY MR. ANDERSON:

4 Q Okay. Serial simply means a series,
5 several. That's how I mean serial, s-e-r-i-a-l,
6 not like Total cereal. Okay?

7 A Okay.

8 Q That's what I meant.

9 A Can you restate the question?

10 Q Yeah. I mean, it is unusual, Mr. Davies,
11 for someone to file 15 Telephone Consumer Practice
12 Act cases, in my experience. And I'm probing as
13 to why you've decided to become a serial Telephone
14 Consumer Practice Act plaintiff.

15 A I got to the point where it was just
16 aggravating me. And if somebody doesn't do
17 something, nothing ever changes.

18 Q I see. And are you -- has anyone
19 promised you any kind of remuneration for
20 participating in these cases?

21 A There -- I've heard there is some money.
22 It is not huge amounts, but...

23 Q And what has been promised you?

24 A Nothing has been promised.

1 I believe it's around \$500 to \$1,500 per
2 fax.

3 Q Okay. And have you received any kind of
4 remuneration --

5 And you know what I mean by remuneration?

6 A Yes.

7 Q I mean money or other things of value.
8 Have you received anything to date?

9 A I have.

10 Q What have you received?

11 A I think three different cases in the past
12 that I was not the plaintiff on, that have
13 settled, I had received, I want to say
14 100-something on one, 200-something on another,
15 and 2500 on a third.

16 Q Okay. So tell me about those cases. You
17 say you were not the plaintiff in those cases?

18 A No, just part of the class.

19 Q You were part of the class. Okay.

20 And in the cases where you are a
21 plaintiff yourself, have you received any kind of
22 payment or other remuneration?

23 A No.

24 Q And how is it that you became represented

1 by Mr. Smith and his law firm in these Telephone
2 Consumer Practice Act cases?

3 A His firm represented the plaintiffs in
4 the three that settled prior.

5 Q I see. So did you reach out to him or
6 did he reach out to you?

7 A I reached out to him.

8 Q And do you have some kind of engagement
9 letter with his firm?

10 A Yes.

11 Q And does Mr. Smith's firm represent you
12 or your business in any other kind of matters? In
13 other words, in addition to these Telephone
14 Consumer Practice Act cases?

15 A No.

16 Q Okay. So you're pretty certain there are
17 15 cases, Telephone Consumer Practice Act cases,
18 where you are the plaintiff?

19 A I think that's the number.

20 Q Okay. I must be missing a few. So of
21 course, one of them is this case we're involved in
22 here, is Davies vs. W.W. Grainger, Inc.

23 And then I have one -- and you are
24 welcome to look at these if you want to refresh

1 your recollection.

2 I have one called David Davies vs.
3 Badaro Group, B-a-d-a-r-o, Group, that was filed
4 in the Circuit Court of Cook County. And again,
5 you're welcome to look at it.

6 But is that one of cases where you are a
7 plaintiff?

8 A Yes.

9 Q Okay. And then I believe there is
10 another one called David Davies vs. Construction
11 Consulting & Concepts, LLC, filed in the Circuit
12 Court of Cook County.

13 Is that another case where you are -- is
14 that another Telephone Consumer Practices Act case
15 where you're the plaintiff?

16 A I believe so, yes.

17 Q Actually, I may have misspoken. I think
18 it is actually the Telephone Consumer Protection
19 Act, not Practices Act.

20 But you knew what I meant, right?

21 A I did.

22 Q Okay. And then I have one called
23 David Davies vs. Construction Expo, Inc.,
24 International Conference Management, Inc.,

1 Paul Bryant, so on, and so forth.

2 Is that another Telephone Consumer
3 Protection Act case where you are the plaintiff?

4 A Yes, I believe it is.

5 Q Okay. And then I have one called David
6 Davies vs. Dunn Right, D-u-n-n, Right Roofing &
7 Contracting, filed in the Circuit Court of Cook
8 County.

9 Is that another case where you,
10 Mr. Davies, are the plaintiff in a Telephone
11 Consumer Protection Act case?

12 A Yes, I believe it is.

13 Q Okay. And then there is another one
14 called David Davies vs. Fetter Enterprises,
15 F-e-t-t-e-r, Enterprises, Inc.

16 Does that one ring a bell?

17 A I believe it does.

18 Q Okay. So that's another Telephone
19 Consumer Practice Act case where you're the
20 plaintiff; is that right?

21 A Yes.

22 Q And then I have one called David Davies
23 vs. Flooring Systems, Inc., also appears to be
24 filed in the Circuit Court of Cook County.

1 Is that another Telephone Consumer
2 Protection Act case where you're the plaintiff?

3 A Yes, I believe it is.

4 Q And then I have one called David Davies
5 vs. Bolden, that's B-o-l-d-e-n, Omega Software,
6 et cetera, et cetera.

7 Is that another Telephone Consumer
8 Protection Act case where you are the plaintiff?

9 A Yes, I believe it is.

10 Q And then there appears to be another one
11 called David Davies vs. LLL Insurance Services,
12 LLC, Construction Industry & Building Trades
13 Purchasing Group Association of America,
14 et cetera, et cetera.

15 Is that another case where you are the
16 plaintiff in a Telephone Consumer Protection Act
17 case?

18 A Yes, I believe it is.

19 Q And then I have one called David Davies
20 vs. Roof Masters, Inc.

21 Is that another Telephone Consumer
22 Protection Act case, where you are the plaintiff?

23 A Yes, I believe it is.

24 Q And then I have David Davies vs.

1 U.S.A. Iso Canal, Inc., I-s-o, C-a-n-a-l, Inc.,
2 d/b/a Lamps One, and some other parties.

3 Is that another Telephone Consumer
4 Practice Act case where you are the plaintiff?

5 A Yes.

6 Q And then I have one called David Davies
7 vs. Water Cannon Inc., and some other parties.

8 Is that another Telephone Consumer
9 Protection Act case, where you are the plaintiff?

10 A Yes, I believe it is.

11 Q And then I have one called David Davies
12 vs. Woodland Distributors, Inc.

13 Is that another Telephone Consumer
14 Practices Act case where you are the plaintiff?

15 A Yes, it is.

16 Q That's all I have.

17 And I realize this may be an unfair
18 memory test, but there must be some others,
19 because that was only 12.

20 Are there others that you are aware of
21 that I didn't mention?

22 A I would have to confer with my lawyer on
23 that.

24 Q Okay. Fair enough.

1 And am I the first person who has taken
2 your deposition in any of these Telephone Consumer
3 Protection Act cases?

4 A Yes, you are.

5 Q Okay. And are all those cases that we
6 went through, are they all still pending, or have
7 any of them been disposed of, to your knowledge?

8 A They're all still pending.

9 Q Okay. All right. Mr. Davies, let me
10 show you what I'll mark as Davies Exhibit No. 1
11 for identification.

12 MR. ANDERSON: There's a copy for you,
13 Mr. Smith.

14 MR. SMITH: Thank you.

15 (Document marked as Davies
16 Exhibit No. 1 for identification)

17 BY MR. ANDERSON:

18 Q Before we get to that, let me just ask
19 you a couple other questions about your receipt of
20 marketing or advertising.

21 I hear you saying, you just kept putting
22 all these, as you say, reams of incoming faxes in
23 a pile.

24 Where did you keep the pile?

1 A My computer desk is right here to my left
2 (indicating).

3 Q Okay.

4 A There is a space right underneath there,
5 there is a shelf right there.

6 Q Yeah.

7 A The fax machine is here (indicating).
8 So it is easiest -- actually, I just
9 remove it and put it there on the ground -- on the
10 shelf.

11 Q I see. And are you similarly a collector
12 of other forms of advertising? You must get --
13 like everybody else, you must get catalogs in the
14 mail, mail advertising, post cards, newspaper
15 flyers. Are you a collector of those materials as
16 well?

17 A No.

18 Q Okay. So what do you do with those, just
19 toss them?

20 A They go right in the garbage.

21 Q Oh, okay.

22 All right. Well, let's turn your
23 attention now to what I've marked as Exhibit No. 1
24 for identification.

1 Do you recognize that?

2 A Yes.

3 Q What do you recognize that as?

4 A A fax that came to my office.

5 Q Okay. And how do you know that?

6 A This is the one -- one of the faxes I
7 sent to my attorney.

8 Q Okay. And so if we went and looked at
9 your stack under your computer desk, do you think
10 we would find this Exhibit 1 in there?

11 A I still have them.

12 Q Okay.

13 A Yes.

14 Q All right. And do you have any kind of
15 log or record of when you received the fax?

16 A No. Although the fax machine, I believe,
17 dates everything that comes in.

18 Q That's fair enough.

19 And so do you have any recollection
20 whatsoever, what you did -- what happened when you
21 received this particular fax that we've marked as
22 Exhibit 1?

23 A At first, I just put it in the pile.

24 Q I see. Which was just pursuant to your

1 custom to have a fax -- when a marketing fax comes
2 in, you just take it off the fax machine and throw
3 it in the pile?

4 A Just put it in the pile.

5 Q That's pretty much your practice?

6 A That's my practice.

7 Q Okay. So you're not stopping to read
8 them or study them and say, "Oh, this might be
9 interesting," or anything at all. You're just not
10 even glancing at it. You're just pulling it off
11 the fax machine and throwing it in the pile under
12 your computer?

13 A I read it, in that I want to make sure
14 it's not something that I'm expecting. Beyond
15 that, once I see it is an advertisement that I
16 didn't expect, I put it under the computer table
17 on the pile.

18 Q Okay. And so far as Exhibit 1 is
19 concerned, is it likely that that's what happened
20 with this particular exhibit, you just glanced at
21 it, you saw it was an ad, and you threw it in the
22 pile?

23 A That's correct.

24 Q Okay. All right. And I think I know the

1 answer to this question, but to state the obvious,
2 at the bottom of the fax, there are some
3 instructions about what you can do if you do not
4 want to receive faxes from Grainger.

5 In order words, it says quote: "If you
6 do not wish to receive faxes from Granger, please
7 call 1-888-739-4920, extension 1732, and enter the
8 fax numbers to which you no longer wish to receive
9 correspondence, or fax your request to
10 1-866-404-3933. Our failure to comply with your
11 request within 30 days of receipt is unlawful,"
12 end of quote.

13 So here is my question: Did you do any
14 of that?

15 A Honestly, I can't read this, it's so
16 tiny. Let me get my glasses.

17 Q Well, I appreciate that --

18 A I don't recall.

19 Q -- gratuitous remark about it, but did
20 you do any of those things on here?

21 A I don't recall doing that.

22 Q Okay. And since you brought out your
23 glasses for that little exercise there, do you
24 typically wear glasses in the course of the day?

1 A Just for reading.

2 Q Just for reading. Okay.

3 So put your glasses on, Mr. Davies, if
4 you would.

5 A Um-hm.

6 Q And what is your vision now that you have
7 corrected it with those glasses?

8 A It's better. I'm sorry, it's better.

9 Q Okay. So with your glasses on, do you
10 correct to 20/20 more or less?

11 A Yes, I think I do.

12 Q Okay.

13 A I can read this.

14 Q Okay. So with your glasses on, you don't
15 have any problem reading any of the text on
16 Exhibit 1, correct?

17 A It's small, but I can make it out.

18 Q Okay. Is there anything on this page
19 that you cannot read with your glasses on,
20 Mr. Davies?

21 A No, I think I can read it.

22 Q Okay. And is there anything on there
23 that you don't understand, that it's not in
24 English, or a language that you don't understand?

1 A I understand it.

2 Q Okay. And in fact, because of your
3 experience receiving faxes, you didn't even really
4 have to be told that you had a right to send in by
5 fax or phone, a request not to receive anymore
6 faxes, correct?

7 I mean, you already knew that, right?

8 A That's not always the case on every fax.
9 And most of the time, if it is the case, it's
10 written right across the bottom, real big.

11 Q Okay. But that wasn't my question.

12 A In this case --

13 Q That wasn't my question.

14 You already knew from your custom and
15 practice in dealing with faxes, that you had the
16 right to call or fax a request to opt out of
17 receiving any future faxes. Right?

18 A I've seen that in cases, yes.

19 Q Yes. And in this particular -- in the
20 Grainger case, you elected not to exercise that
21 option. Correct?

22 A That is correct.

23 Q Okay. Now our records indicate that this
24 is the only fax that you got from us. Do you have

1 any reason to believe that you got more than this
2 one from Grainger?

3 A No.

4 Q So to the best of your knowledge,
5 Exhibit 1 that you have before you, is the only
6 fax marketing that you've ever received from
7 Grainger; is that correct?

8 A To the best I can recall, yes.

9 Q And how would you say that you were
10 injured, if at all, by the receipt of this single
11 one-page fax, Mr. Davies?

12 MR. SMITH: Objection to the form. Calls
13 for a legal conclusion.

14 MR. ANDERSON: I'm not asking for a legal
15 conclusion. He can describe it in his own
16 words, his own lay language.

17 A I wouldn't say injured. I was aggravated
18 with it. This fax aggravates me more than a lot
19 of them, because of all the black ink they go
20 through.

21 BY MR. ANDERSON

22 Q I see. Okay. So you got one single-page
23 fax from Grainger, it didn't interrupt your
24 business, you spent little or no time pulling it

1 off the fax machine and sticking it in a stack.

2 And you're aggravated because it required
3 some, probably immeasurable, amount of black ink
4 to print the one page.

5 Is that the total of it, Mr. Davies?

6 A I would not say it is immeasurable, I
7 would say it's measurable. I buy ink often, I'm
8 not a rich person, it's expensive. Every time I
9 go, it is aggravating to have to buy it.

10 And there is a lot of black ink used on
11 this. Those are the ones I hate the most, when
12 they get black backgrounds on them and I have to
13 print that.

14 Q I see. Well, I only said it was
15 immeasurable because you haven't -- I thought we
16 established that you haven't undertaken any effort
17 to quantify or measure whatever the significance
18 is of the black ink on this page.

19 Am I right about that?

20 A I couldn't tell you the exact amount of
21 ink. I just know I have to go to Kinko's and buy
22 packages of ink a lot more than I would like to.

23 Q Do you use the same ink cartridge for
24 your printer or copier?

1 A It's all one.

2 Q I see. So the machine you have is a fax
3 machine, it's a copier, and a printer, right?

4 A That's correct.

5 Q I see. So it is a multipurpose machine?

6 A It is.

7 Q And the ink you buy serves all those
8 purposes, right?

9 A It does.

10 Q I see.

11 We sent over to Mr. Smith some of the
12 company records showing your customer relationship
13 with Grainger. Did you have a chance to look at
14 those?

15 A No.

16 Q Pardon me for a moment, I'm looking for
17 the transmittal that we sent to Mr. Smith.

18 MR. ANDERSON: Let's mark this as Davies
19 Exhibit No. 2 for identification.

20 (Document marked as Davies

21 Exhibit No. 2 for identification)

22 BY MR. ANDERSON:

23 Q Okay. Here is Exhibit 2.

24 That exhibit includes some materials that

1 we sent over to your lawyer, Mr. Smith. And it
2 includes some copies from the DEX Yellow Pages
3 which I'm going to ask you about in a minute.

4 But right now, I'd like to ask you
5 about -- there is page here that has a listing of
6 transactions, it's like a spreadsheet. And the
7 left-hand column says customer account number, and
8 then it has an invoice number, and so on and so
9 forth.

10 A Okay.

11 Q Could you look at that a moment,
12 Mr. Davies?

13 That is a W.W. Grainger business record.
14 It is a summary record of transactions, with a
15 customer account number that they have on file for
16 you.

17 A Okay.

18 Q Okay? That's what this is.

19 And you can see that there is an invoice
20 date of February 16, 1994; March 8, 1995; March 2,
21 1995; April 28, 1995; July 31, 1997; July 13,
22 2000; October 31, 2001; March 2, 2005; and
23 September 15, 2008.

24 And I think they only ran it up through

1 then, because this fax that we marked as Exhibit 1
2 was sent to you in 2009. So they just ran it up
3 through the date of that fax, just to explain the
4 date range.

5 MR. SMITH: I will object to the form.
6 I'm not sure that accurately represents the
7 evidence that's been taking place in the case
8 so far.

9 MR. ANDERSON: Well, I'm just trying to
10 tell you what the document -- what this
11 document is, to put in context.

12 BY MR. ANDERSON

13 Q So Mr. Davies, the company records
14 reflect that you've had a series of transactions
15 with them over a period of time, from 1994 through
16 September 8th.

17 Do you have any reason to disagree with
18 that summary of business records?

19 A I have no idea what these are. I don't
20 recall them, but I can't tell by code numbers what
21 these purchases are.

22 Q Well, you know, I can appreciate that,
23 that you wouldn't -- you wouldn't have any reason
24 to remember the invoice number.

1 But you would certainly have, perhaps,
2 reason to recall that over the course of a period
3 of time from 1994 through 2008, you, or at least
4 your company, engaged in a regular course of
5 purchase activity with W.W. Grainger.

6 And so the question is -- the question
7 for you is: Do you have any reason to believe
8 that that's not the case?

9 A I don't.

10 Q Okay. Let me ask you about that. Are
11 there other people in your business that order
12 things for your business other than you
13 personally, Mr. Davies?

14 I know you told me you had some
15 employees.

16 A My son does at this point. He didn't
17 back then.

18 Q What do you mean by, "back then"?

19 A 2008.

20 Q Okay.

21 A I'm the only person that would purchase
22 anything.

23 Q How old is your son?

24 A He is 28.

1 Q Okay. When did he start working in the
2 business?

3 A He started working in the field when he
4 was in high school, so about ten years ago.

5 Q All right. Let's talk about the period
6 then, 1994 through 2008. Who at your company
7 would have purchased supplies?

8 A That would be me.

9 Q Just you?

10 A Um-hm.

11 Q Okay. Was that --

12 A Yes. I'm sorry.

13 Q Okay. All right. And I know you said
14 you recall purchasing a generator from Grainger.
15 Is there anything else that you specifically
16 recall purchasing from Grainger, as you sit here
17 today without refreshing your recollection with
18 any purchase records?

19 A I didn't purchase a generator. I went in
20 to purchase a generator, and they didn't have any.

21 Q I see.

22 A So I don't know what these items are. It
23 is nine purchases over the course of 14 years, I
24 wouldn't call myself a regular customer of theirs.

1 Q Well, however you want to characterize
2 it, it is what it is.

3 Where did you go -- what was the location
4 you went to, to purchase the generator from
5 Grainger?

6 A It's right across the street from Menards
7 on Oakton and -- I'm trying to think what town
8 that is. It's Morton Grove, I believe.

9 Q Okay. And when did you do that, to the
10 best of your recollection?

11 A Three or four years ago.

12 Q Have you been to other W.W. Grainger
13 stores or outlets?

14 A Not that I can remember. I don't know of
15 any.

16 Q They have a pretty e-commerce website as
17 well. You can go on the internet and purchase
18 product. You know, like HomeDepot.com, or
19 Amazon.com, you can go to WWGrainger.com and
20 purchase product.

21 Have you done that?

22 A Not that I can recall.

23 Q Okay. And when you went into the
24 Grainger store, do you remember if you filled out

1 any paperwork, a purchase order, customer contact,
2 anything at all?

3 A No.

4 Q Okay. Well, some of the stores will
5 take, like, your name and address, and contact
6 information.

7 Do you recall doing that?

8 A I don't. I believe they have that
9 information. I don't recall giving it to them.

10 Q Why do you say you believe they have
11 that?

12 A Because they've sent me things.

13 Q And what kinds of things have they sent
14 you?

15 A Their catalog.

16 Q I see. How often do you get the W.W.
17 Grainger catalog?

18 A I think I've gotten two in the course of
19 28 years.

20 Q How recently?

21 A I don't even remember the last time I got
22 one, it's got to be years. I have no concept of
23 time, I'm bad at that. But it's got to be years,
24 five years maybe.

1 Q Yeah. Well, and I don't mean to fault
2 you in any way for not remembering the details of
3 when things happen. I mean, few of us are able to
4 recall those kind of exact details, when you got a
5 catalog or something like that. So I'm not
6 faulting you at all for that.

7 As you sit here today, do you remember
8 any other transaction with Grainger other than
9 your attempt to purchase the generator?

10 A As I said, years ago, I bought a -- I
11 remember buying a motor for our exhaust fan at the
12 shop from them.

13 Q Yes.

14 A And that's not the kind of thing I
15 typically buy for my business, so that's why I'm
16 not really -- I don't go to Grainger, really.

17 In that case, I needed that, that's what
18 Grainger sells, that type of thing.

19 Q I see. And you bought that for your
20 office?

21 A For my office bathroom fan. It was
22 making a lot of noise, so I replaced the motor.

23 Q Of course you've probably installed or
24 replaced a few bathroom fans for some of your

1 construction customers as well over the years.

2 Am I right about that?

3 A We don't generally do repairs, we do
4 replacement.

5 Q Yeah.

6 A And my electrician supplies all that.

7 Q I see. Is he on your payroll or is he a
8 subcontractor?

9 A Subcontractor.

10 Q And do your subcontractor's purchases go
11 through you as a general contractor?

12 A No.

13 Q So they buy it and then bill it back to
14 you?

15 A It's part of their bid.

16 Q Yeah. Okay. Well, let me see how that
17 works. It's part of their bid, but you roll it
18 all up into one purchase price to the end
19 customer, right?

20 A Yeah, I put together a contract that
21 includes all the work that they want done, but I
22 often have to use subcontractors to get that work
23 done.

24 Q Sure. So you use electricians and

1 plumbers and masons -- I don't know, I'm just
2 guessing. What kind of subcontractors do you use?

3 A All of those and more.

4 Q Okay. And then they bill you, and you in
5 turn bill the customer. Is that how it works,
6 usually?

7 A Well, I bill the customer. I collect the
8 money, they send me their bills, I pay the bills.

9 Q Okay. Okay. And as we sit here and
10 think about it, and you have that summary record
11 in front of you, are there any other specific
12 transactions with Grainger that you can recall?

13 A No.

14 Q Is there anything that would refresh your
15 recollection?

16 In other words, would you have purchase
17 records back in the office, or do you have some
18 kind of informal or formal retention program where
19 you just throw stuff out after so much time?

20 A Going back this far, I mean, if I bought
21 anything, I would have a receipt that got filed
22 away. I don't throw anything away.

23 Q Oh, so you have like 28 years of
24 receipts?

1 A I do.

2 Q Oh. I'm so sorry. Okay.

3 So you could research that subject if you
4 wanted to?

5 A I'd hate to. I mean, it would be
6 difficult to find. It would be among many
7 thousands of receipts.

8 Q Okay. Okay. So if you look at that
9 summary that I showed you there, the most recent
10 transaction they show is September 15, 2008. And
11 we can see some summary information, but we can't
12 tell from this exactly what the nature of the
13 transaction was.

14 Do you recall any transaction in
15 September of 2008, since that's the most current
16 one?

17 A No.

18 Q Okay. How about March of 2005? That's
19 the next most current one.

20 Do you recall any transaction with
21 Grainger there?

22 A No.

23 Q So as you look at this summary page,
24 other than the ceiling fan -- or the bathroom fan

1 purchase, this summary is basically just a mystery
2 to you. Is that a fair characterization?

3 A It is.

4 Q Okay. And you would rule out the
5 possibility that one of your employees is ordering
6 things from Grainger without your knowledge.
7 You'd say that's just not a possibility?

8 A I don't know how they'd pay for it.

9 Q Well, how do you pay the suppliers? What
10 is your custom and practice?

11 A With the ones I use regularly, I have
12 accounts with all of them.

13 Q Okay. They have accounts and then they
14 just bill you in a month or so after you purchase
15 the materials?

16 A Yes, they bill at the end of each month.

17 Q And then how do you pay, with a check or
18 credit card or how does that work?

19 A A business check.

20 Q A business check. And who is authorized
21 to sign your business checks?

22 A Just me.

23 Q All right. So it's possible that one of
24 your employees would have ordered something, but

1 then you ultimately would then have to pay for it;
2 is that correct?

3 A It is not even likely any of my employees
4 would order anything.

5 Q All right. I don't know, I'm just
6 exploring all the possibilities.

7 A No, I do every -- I do all of that.

8 Q I'm just exploring all the possibilities
9 because the company seems to have a record of some
10 transactions with you and you are sitting here
11 saying you only recall one.

12 I'm just trying to explore how that could
13 possibly happen.

14 A Right. But you are only talking about
15 nine transactions over 14 years, and I've made
16 thousands of transactions with other companies.

17 Q Well, okay.

18 A For 28 years, so...

19 Q It is what it is. I'm just trying to
20 account for these. I'm trying to figure out who
21 initiated them at your company and who paid for
22 them, if they were paid for.

23 A Assuming these are accurate, it would
24 have to be me.

1 Q Okay.

2 MR. ANDERSON: We've been going for about
3 an hour. Let's just take a five-minute break.

4 Is that okay with you, Mr. Smith?

5 MR. SMITH: It's okay, if it's okay
6 with --

7 THE WITNESS: It's all right with me.

8 MR. ANDERSON: Okay.

9 THE VIDEOGRAPHER: The time is
10 approximately 11:29 a.m., we're going off the
11 record.

12 (WHEREUPON, a recess was taken,
13 after which the following
14 proceedings were held:)

15 THE VIDEOGRAPHER: The time is
16 approximately 11:40 a.m., and we're back on
17 the record.

18 BY MR. ANDERSON:

19 Q Okay. Mr. Davies, I'm going to ask you a
20 few more questions about what we marked as
21 Exhibit 2.

22 But just to make sure that we're all
23 looking at the same pages, I'm just going to
24 sequentially hand number the pages. Okay?

1 So then I'll be able to say: Please take
2 a look at what I've marked as, like, page 3, or
3 something like that.

4 Is that okay with you?

5 A Yes.

6 MR. ANDERSON: Mr. Smith, if that's okay
7 with you, I'm just going to hand number these
8 pages, so that when we're looking at them,
9 we're all looking at the same page.

10 MR. SMITH: Sounds great.

11 BY MR. ANDERSON:

12 Q Okay. I've now numbered the pages of
13 Exhibit 2 for identification. I've numbered them
14 pages 1 through 9, and I've just put handwritten
15 numbers in the lower right-hand corner.

16 So, Mr. Davies, now I'm going to ask
17 to -- ask that you turn your attention to the page
18 that I hand lettered or hand marked as page 8.
19 Okay?

20 Now that page has the SKU number, in
21 other words, the W.W. Grainger product number.
22 Okay? It's in the second column from the right.

23 And I don't expect you to memorize the
24 product numbers, but I know what they are. So I

1 am going to tell you what they are and see if it
2 refreshes your recollection. Okay?

3 A Okay.

4 Q So the last one on the list there that
5 is -- that has an SKU number of 1DGX4, do you see
6 that?

7 A Yes.

8 Q Okay. So that is a wall fan,
9 manufactured by a company called Broan, B-r-o-a-n.
10 And by the way, these SKU numbers are not
11 a secret. You can go on the W.W. Grainger website
12 and put them in and then look them up, and you can
13 verify all this yourself.

14 So -- but I know we are -- I know what
15 the numbers are, because we went and looked them
16 up.

17 Okay. So this -- and this list, by the
18 way, corresponds chronologically with the list
19 that we just looked at right before we took the
20 break, which is --

21 A The dated one?

22 Q -- the chronology there.

23 A Okay.

24 Q So if you put two and two together, the

1 company is showing that in September of 2008, you
2 engaged in a transaction that involved this
3 product number 1DGX4, which is a wall fan
4 manufactured by Broan Company, B-r-o-a-n.

5 So now that you know that, does that
6 refresh your recollection?

7 A No.

8 Q No -- no clue about that one at all?

9 A Do you know more about what type of wall
10 fan it is?

11 Q No, that's all I can tell from looking it
12 up on the website.

13 Oh, you know what, I can't read my own
14 writing. My colleague here has corrected me that
15 I misspoke, so I'm going to start all over again.
16 And you can scratch what I said.

17 There is a wall fan on the list, but I
18 got it in the wrong order.

19 The last one that is on the list, which
20 is 1DGX4, okay? That is the transaction that we
21 believe corresponds with the September 15, 2008
22 transaction, and that is a dehumidifier.

23 In other words, SKU 1DGX4 is a
24 dehumidifier.

1 And so to be absolutely correct here, the
2 company's records show a transaction with your
3 company in September of 2008 involving a
4 dehumidifier.

5 Now with that clarification, does that
6 refresh your recollection?

7 A I don't recall it.

8 Q Okay. You can't affirm it or deny it one
9 way or the other, you just don't recall?

10 A I don't recall it, no.

11 Q Yeah. Well, you know, it was five years
12 ago, so I'm not faulting you on that. It was a
13 while ago, but I'm just --

14 A I've bought 100,000 things since then. I
15 don't recall it, I'm sorry.

16 Q Okay. So it could happen, you just don't
17 recall it as you sit here today?

18 A Yes.

19 Q All right. Let's test your recollection
20 on a couple others.

21 The next one up from the bottom there is
22 an SKU number 3WE70, and that is the product
23 number for a welding blanket, and that corresponds
24 with a transaction between W.W. Grainger and your

1 company, dated March 2, 2005.

2 A Yes, I do recall that.

3 Q Now you recall the welding blanket?

4 A Yes. If you hadn't said that, I'd
5 never -- I know I bought one of those.

6 Q Yeah.

7 A I couldn't recall buying it from
8 Grainger, but I will take your word for it, that's
9 where I got it.

10 Q Okay. I'm not a welder, but I'm guessing
11 that a welding blanket is a blanket like a piece
12 of equipment that you put down to protect other
13 objects, or maybe people, from the welding
14 operation?

15 A It's good up to 3,000 degrees.

16 Q Yeah. So it's kind of a spark protector
17 or a flame protector, is that what it is?

18 A Yes. Yes.

19 Q Okay. In any event, you now -- your
20 recollection is refreshed that you did purchase a
21 welding blanket, and you probably got it --

22 A I know I purchased one, so, yeah.

23 Q Okay. So the next one from the bottom,
24 this will be the third from the bottom is an

1 SKU number 4M218. And we looked up that part
2 number and it's for an HVAC motor. And it
3 corresponds with a transaction between W.W.
4 Grainger and your company on or about October 31,
5 2001.

6 Again, that was a long time ago, and I
7 wouldn't fault you if you didn't remember it, but
8 does it refresh your recollection?

9 A That might be the bathroom fan motor I
10 was referring to, that I did recall.

11 Q Okay. Let's move up the list, then. The
12 next one up from the bottom is 5K917.

13 Do you see that one, 5K917?

14 A Yes.

15 Q And that is the product number for a
16 split-phase motor. And that corresponds with a
17 transaction between your company and W.W.
18 Grainger on July 13 in the year 2000. Again, a
19 while ago.

20 Does that refresh your recollection?

21 A No.

22 Q Do you know what a split-phase motor is?

23 A No.

24 Q I don't.

1 A No clue.

2 Q Okay. Back to your list here. The very
3 top entry is an SKU number 4C704.

4 Do you see that?

5 A Yes.

6 Q That is the wall fan manufactured by
7 Broan Company, B-r-o-a-n. And that corresponds
8 with a transaction between W.W. Grainger and your
9 company on or about February 16, 1994. That's the
10 earliest record that we've been able to locate.

11 Does that ring a bell?

12 A No.

13 Q Okay. Do you know what a wall fan
14 manufactured by Broan is?

15 A I think it's an exhaust fan that goes --
16 mounted in the wall. I don't know if it is an
17 exhaust fan for a bathroom or just to exhaust a
18 room.

19 Q Well, I remember that you told me earlier
20 today about a bathroom fan.

21 A Well, I only got the motor for that fan.

22 Q Yeah.

23 A Not the fan -- I didn't replace the fan,
24 I just replaced the motor.

1 Q Okay.

2 A So that wouldn't be that.

3 Q Okay. More than likely, that's the HVAC
4 motor we talked about?

5 A Yes.

6 Q Okay. So in any event, the wall fan
7 manufactured by Broan, that -- my attempt to
8 refresh your recollection doesn't ring a bell with
9 you?

10 A No, it doesn't.

11 Q Okay. Well, it was a long time ago.

12 So there is another document here that I
13 marked, this is page 9 -- I'm sorry, it is page 6
14 of Exhibit 2 for identification.

15 Do you see that one?

16 A Yes.

17 Q Okay. Let me find my copy of that one
18 here. Okay.

19 All right. So you have that in front of
20 you?

21 A Yes.

22 Q Okay. So this is a W.W. Grainger
23 business record entitled: "Customer line-item
24 display."

1 And this is the display that was created
2 with -- for the most recent transaction between
3 your company and Grainger in September of 2008,
4 specifically September 15, 2008.

5 Do you see the date there?

6 A No.

7 Q It's in the fourth column from the right,
8 it says, "Document date."

9 A Oh.

10 I see document number.

11 Q Okay.

12 A Which is the date here?

13 Q It's right here.

14 A Oh, over there?

15 Q Yes. Right there, document date.

16 A Okay.

17 Q Can you see it? Do you have your glasses
18 on?

19 A I got the glasses on.

20 Q Okay. So, I'm just, again, trying to
21 refresh your recollection. This is a business
22 record that reflects a transaction where you came
23 in -- you or somebody on behalf of Davies Home
24 Services came into the W.W. Grainger store and

1 paid for this item with cash. Okay?

2 Either -- when I say cash, I mean check
3 or currency. Okay?

4 And since this is the September 2008
5 transaction that we were looking at, you know,
6 that would be the last transaction on our list
7 which was the dehumidifier.

8 So putting two and two together, this
9 tells us that somebody on behalf of Davies Home
10 Services came to the W.W. Grainger store on or
11 about September 15, 2008, and paid \$221.27 in
12 cash -- and when I say cash, I'm including
13 possibly a check -- for a dehumidifier.

14 Does that ring a bell?

15 A It doesn't, but I think I can maybe
16 surmise what it is.

17 I've got a long-time customer for the
18 past 28 years, she's been a good customer of mine.

19 Q Yes.

20 A I remember she called me, she said her
21 dehumidifier had broken, she asked where to buy
22 one. I think I probably told her several places.
23 And I said if you go to -- I probably sent her to
24 Grainger.

1 And I'm guessing, because she was trying
2 to get a discount, she mentioned my name. You
3 know, trying to get a contractor's discount. I'm
4 not sure Grainger even gives that, but that's the
5 only thing I can think of.

6 Q Okay. So this is not a transaction where
7 they billed your company on account. This is a
8 transaction where somebody came in with a Davies
9 Home Services check or cash, and paid for it on
10 the spot. That's what this is?

11 A Yeah, it might have been --

12 Q That doesn't sound like something you
13 would allow some customer to do.

14 A Well, if she paid cash, it's very
15 possible she just used my company name to try to
16 get a discount.

17 The address is wrong here. That would
18 have been -- I would have used my business address
19 of 824 Busse Highway. This is an attempt at my
20 home address, and it's wrong.

21 Q What is your home address again?

22 A 1118 West Crescent.

23 Q I see.

24 A And that customer knows me for years, she

1 knows where I live.

2 Q So you're just --

3 A I'm just speculating.

4 Q You're just speculating, you're not
5 exactly sure, right?

6 A If it was a portable dehumidifier, it's
7 not the kind of thing I would buy for business. I
8 buy materials to build things.

9 If it were a dehumidifier to mount to a
10 furnace, my heating and air man would have bought
11 that, I never buy those. So it's not the kind of
12 thing I would buy.

13 Q So you're just guessing somebody else
14 bought it, using your name?

15 A It's very possible.

16 Q But of course, you don't know that for
17 certain?

18 A I could probably find out. I could ask
19 her.

20 Q Okay. What about the phone number there?
21 There is a phone number, (847) 825-3738. That's
22 your business office, isn't it?

23 A That's correct.

24 Q You wouldn't give your checkbook out to

1 somebody else, would you?

2 A No.

3 Q I didn't think so.

4 And you wouldn't let somebody charge
5 anything on your credit account that you might
6 have?

7 A No. I don't believe I have a credit
8 account with Grainger.

9 Q I don't know whether you do or not, I'm
10 just asking whether you would allow that kind of
11 practice.

12 A I would not.

13 Q Okay. And you don't say to your
14 customers, Well that chandelier you want for the
15 home remodeling project, just go into Home Depot
16 and put it on my account.

17 That's not how you do your business, is
18 it?

19 A No.

20 Q Okay. And by the way, for that welding
21 blanket that you recall, do you remember how you
22 ordered that? Was it online? And by that I mean
23 the W.W. Grainger internet site. Or did you go
24 into a retail store?

1 Do you remember how you bought that?

2 A I don't. I don't remember. I don't do a
3 lot of online ordering, so I'm doubting it's that
4 way. I probably called them looking for it.

5 Q Okay. Fair enough. Fair enough.

6 And getting back to Exhibit 1 again,
7 which is a Grainger fax, I know we talked about
8 this before, but I just wanted to ask you a couple
9 questions.

10 So it's got -- you mentioned calling
11 Grainger, and this has got the Grainger phone
12 number on it.

13 Do you have, like -- I mean, when you say
14 you likely called Grainger and ordered that
15 welding blanket, do you have the Grainger phone
16 number on file somewhere, or do you remember how
17 you got it?

18 A No, I don't have it on file. I've got a
19 list next to my desk with all the places I call
20 often. They're not on that list.

21 So I couldn't tell you how I found their
22 number. Probably in the phone book.

23 Q Okay. Fair enough. I'm just wondering,
24 because there is a phone number on this fax. I

1 was wondering whether maybe you used that phone
2 number.

3 But in any event, you don't recall, as
4 you sit here today?

5 A No. I wouldn't -- I wouldn't remember
6 that.

7 Q Okay. And -- okay.

8 And you seem to have good English
9 language skills, you read and write well, so this
10 is just kind of a general question.

11 Is there anything about this fax, the
12 communication that's on this fax that's unclear to
13 you?

14 In other words, you don't get what the
15 meaning is?

16 MR. SMITH: Objection to the form.

17 A I get it.

18 BY MR. ANDERSON:

19 Q Okay. So the language and substance is
20 clear to you?

21 MR. SMITH: Objection to the form.

22 BY MR. ANDERSON:

23 Q Correct?

24 MR. SMITH: Asking for a legal

1 conclusion.

2 MR. ANDERSON: No, I'm not asking for a
3 legal conclusion. I'm asking for his
4 perception as someone who's an experienced
5 businessman and someone who apparently has
6 good command of the English language.

7 It is a pretty simple question.

8 A I understand the fax.

9 BY MR. ANDERSON:

10 Q Okay. So everything in the fax, in terms
11 of the information that's being presented, is
12 clear to you, correct?

13 MR. SMITH: Same objection.

14 A Yes.

15 BY MR. ANDERSON

16 Q Okay.

17 Then let's look at the rest of Exhibit 2,
18 which you have in front of you. If you could
19 reassemble that.

20 A Okay. What page?

21 Q Well, I want to look now at those DEX
22 Yellow Page documents. And I've numbered those --
23 well, we can look at them and get the numbers.

24 Let's get it back in page number

1 order there.

2 A Okay.

3 Q Okay. So I will pick out the page number
4 here to start with. I would like to start with
5 page 3 of the document.

6 And this is a document that we copied
7 from the AT&T Yellow Pages, you can see that. And
8 we've copied it from the Yellow Pages dated
9 June 7, 2007. And you can see that the area codes
10 that are in this particular Yellow Pages book
11 include your area code. Correct?

12 You're in the Park Ridge area, as you
13 told us.

14 So anyway, we've highlighted here, two
15 entries in the AT&T Yellow Pages. And this is,
16 again, is on page 3 of our Exhibit 2 for
17 identification.

18 Do you recognize those entries,
19 Mr. Davies?

20 A Yes.

21 Q Okay. What do you recognize them as?

22 A A listing for my business in the Yellow
23 Pages.

24 Q Okay. And so there are actually two of

1 them, right?

2 There is the entry for Davies Home
3 Services at 824 Busse Highway, Park Ridge, 60068,
4 with a phone number of 825-3741.

5 And then there is a second entry, also
6 for Davies Home Services, at 824 Busse Highway,
7 Park Ridge, 60068, this time listing a phone
8 number of 825-3738.

9 Correct?

10 A Yes.

11 Q Okay. And -- well, let's see. Which one
12 of those is your company's fax number?

13 A Well, the 825-3741 is the company fax
14 number.

15 Q Yes.

16 A But it wasn't exclusively a fax number at
17 that time.

18 Q Okay. So if I -- at that time, if I
19 dialed that number, could I send you a fax?

20 A You could.

21 Q Okay.

22 A But you would first get a voicemail that
23 said, Leave a message. If you need -- if you want
24 to send a fax, you've got to press "1-2-3" on your

1 phone to turn on the fax machine.

2 Q Okay. And what other functions did that
3 phone number have?

4 A That was it.

5 Q Okay. So I'd press 1 and want to send a
6 fax. I mean, I could also use it to leave, what,
7 a voicemail?

8 That's what I'm trying to find out, what
9 other uses did that number have?

10 A Yes. It was never meant to be that. The
11 3738 is my main number. The 3741 was never meant
12 to be my main number.

13 They put that in there, I think, that
14 year by mistake, actually. But -- so we hooked up
15 an answering machine to that, saying the correct
16 number to call, and they still could leave a
17 message if they wanted to.

18 And if they were trying to send me a fax,
19 they could. I think they had to press "1-2-3" and
20 then it would activate the fax machine.

21 Q Okay. I think I understand that that
22 number had multiple purposes. But one of the
23 purposes is that you could call 825-3741 and send
24 your company a fax, if you were so inclined to

1 do so?

2 A Yes.

3 Q Okay. And these listings in the Yellow
4 Pages, who at your company is responsible for
5 submitting those listings?

6 A That's me.

7 Q Okay. So you are the person then, that
8 gave the AT&T Yellow Pages these two phone numbers
9 that we just recited; is that correct?

10 A Well, AT&T gave me the numbers, and then
11 they printed them in their book.

12 Q Okay. Well, I understand that the phone
13 company ultimately assigns all phone numbers. But
14 you have to make a decision about which ones you
15 want to pay to have advertising for; is that
16 correct?

17 A Yeah, I don't know if this is -- this
18 isn't the White Pages, so it's a little different.
19 That's just something they list automatically. It
20 has nothing to do with what we pay for.

21 Q I see. Okay.

22 A That's probably why it's listed wrong in
23 here. It's not something I would have proofread
24 and approved of.

1 Q But I mean, you were aware this was in
2 here, right?

3 A No.

4 Q No, never aware of this?

5 A Not until we got calls on the wrong
6 number. I had to call and have that rectified in
7 the book. So from then on, they just printed the
8 one number.

9 Q I see. So when did you start getting
10 calls, as you say, on the wrong number?

11 A We would get incoming calls that weren't
12 faxes, so -- I don't remember what year --
13 whatever this year it was printed, probably.

14 And so that's when we got an answering
15 machine and hooked it up and devised a way to
16 inform people that they're supposed to call the
17 other number when they're trying to call the
18 office.

19 Q Okay. Well, did you tell -- I mean, you
20 started getting these wrong numbers or these
21 mistaken calls in 2007, correct?

22 A I couldn't tell you the year. It
23 probably corresponds with this ad in here, because
24 this was not supposed to be here.

1 Q Okay. Well, this -- I mean, this
2 directory I showed you, and that we marked as part
3 of Exhibit 2, is dated June 2007.

4 Does that help you place in time when you
5 started receiving the calls on this number?

6 A Yes. That would make sense.

7 Q Okay. And then so did what? You called
8 up AT&T and said, Don't show that number?

9 A Yes.

10 Q And when did you do that?

11 A It would have been after we realized we
12 had a problem, so probably that same year, or just
13 the year after that, for the next book.

14 Q Well, I think we have the next year as
15 part of that exhibit, so let's just --

16 A Let's see. I don't remember the year we
17 made the correction.

18 Q Okay. So page 4 is the cover page for
19 the June 2008. This is June 2008.

20 And if we look on page 5, what do we see?

21 A They still have them both listed at that
22 point.

23 Q So maybe you didn't call them in 2007?

24 A I called them when I realized it was

1 a problem.

2 Q Well, but that's --

3 A Again, I couldn't tell you what year.

4 Q So it might have been you didn't call
5 them right away; is that correct?

6 A That's correct.

7 Q Okay. Even though you were aware of what
8 you say was the problem?

9 A I don't know when I became aware of it.

10 Q In any event, we know that there is at
11 least a couple years out there where you had your
12 fax number published in basically AT&T
13 directories, correct?

14 A Yes.

15 Q And you can't tell us when you asked AT&T
16 to take down the fax number or to take off the fax
17 number from their public listing?

18 A I would have to look in their records to
19 see when they made that correction.

20 Q Yeah. So without looking at their
21 records, as you sit here today, you can't tell us
22 when you got around to telling AT&T, Please take
23 my fax number out of your directories?

24 A Yeah. I mean, it wasn't a real big

1 problem, because we don't get most of our calls
2 from the phone book. We get most of our calls
3 from repeat business, referrals, our street
4 signs -- I mean our yard signs and our trucks.

5 So we don't get a lot of calls from the
6 phone book in the first place, certainly not the
7 White Pages.

8 So we probably weren't aware of the
9 problem for a long time.

10 Q But you said you were getting unwanted
11 faxes, correct?

12 A Well, we've always got unwanted faxes.
13 What we were getting were calls from people
14 looking for our office, and they were calling the
15 fax machine line.

16 Q Well, how did people get your fax number?

17 A The only way people can get my fax
18 number, typically, would be it's on my contract.

19 When I'm working with somebody, I send
20 them a contract for a job. I'll have the fax
21 number on there, in case they want to sign the
22 contract, and fax it back to me.

23 Q Okay. So that's one way.

24 A Yeah.

1 Q Another way, of course, is your fax
2 number was publicly listed in some AT&T directory.

3 A It is not listed as a fax number, but
4 it's there.

5 Q I know it doesn't say "fax" next to it,
6 but in practice, it was a fax number, correct?

7 A It was set up -- the whole reason I got
8 the second line -- there was two reasons.

9 One, to have a fax machine on that line.
10 And two, for me to use that line for
11 outgoing calls, so I don't tie up my main line.

12 Q Okay. So I'm just exploring with you the
13 possible ways that people could get this number
14 that you use as a fax number, 825-3741. Okay?
15 That's what I'm exploring with you.

16 One way is they could have got it out of
17 the AT&T directories. Another way is they could
18 have got it off your contracts, correct?

19 A Yes.

20 Q Okay. Are there other ways that they
21 could have got your fax number?

22 A Verbally. I mean, I've given my fax
23 number to people when I want them to fax me
24 something.

1 Q Okay. Is it on your business card?

2 A No.

3 Q Is it on your letterhead?

4 A No.

5 Q Okay. And when you go into your supplier
6 stores, you know, when you go into Home Depot or
7 occasionally when you went on to W.W. Grainger, do
8 you fill out the customer account applications and
9 give people your contact information, including
10 your fax number at that time?

11 A I've done that with the stores I have
12 accounts with.

13 Q Sure.

14 A Grainger is not one of those.

15 Q You're sure about that?

16 A I'm not.

17 Q Okay. It could have happened, you just
18 don't remember?

19 A Long time ago, but I don't recall doing
20 that.

21 Q Okay. I mean, you just don't have a
22 recollection one way or another, what kind of
23 account information you may have filled out when
24 you went into the W.W. Grainger store.

1 Is that a fair statement?

2 A I'm pretty sure I -- in that store,
3 I've -- I don't want too many accounts. So in the
4 stores I don't frequent very often, I generally
5 pay with a credit card or a business check. I
6 didn't want to have too many accounts open.

7 Q Okay. So anyway, I'm just exploring with
8 you all the possible ways where your fax number is
9 out in the public domain. And so I want to make
10 sure we've covered all the possibilities.

11 One is, it's out in the public domain in
12 some directories.

13 Two, it's on your contract.

14 And three, from time to time, you've
15 given it out to people that want to have it.

16 And fourth, for some companies where
17 you've have supplier accounts, you've probably
18 included it in your company information.

19 Are those the four possibilities?

20 A Those are four possibilities.

21 Q Okay. Are there any others that you can
22 think of, since you know your business better than
23 I do?

24 A Not offhand. I mean, it's not a -- we

1 don't keep our fax number a secret. It shouldn't
2 have to be a secret.

3 Q No, it shouldn't have to be a secret.
4 But some people have unlisted numbers obviously --

5 A It doesn't work so good in business.

6 Q No, I suppose that's true. I suppose you
7 could have had an unlisted fax number if you
8 didn't want it out in the public domain.

9 You could have done that, but you chose
10 not to do that, correct?

11 A Yes. I wasn't stopping it from being in
12 the public domain. I just don't like when people
13 abuse it.

14 Q I see. And again, getting back to
15 Grainger, you never told them that you did not
16 want to receive any fax communications from
17 Grainger. Correct?

18 A I don't recall doing that.

19 It's possible I did it, and that's why I
20 didn't get any more.

21 But I don't recall, specifically, that
22 one. I get so many of these.

23 Q Yeah. Well, in the realm of things,
24 anything is possible. But I'm just asking you

1 today, you know, what you recall.

2 And you'll correct me if I'm wrong, but
3 your testimony today is you don't recall ever
4 telling Grainger, Please don't send me any fax
5 communications.

6 Is that correct?

7 A That is correct.

8 Q Okay.

9 (Cell phone interruption)

10 BY MR. ANDERSON:

11 Q Would you have any written record of when
12 exactly you'd say you told AT&T to stop publishing
13 your fax number in its directory?

14 A No.

15 Q You think you did that by phone?

16 A I'm sure I would have done it by phone.

17 Q Okay. I see. So we don't have any
18 written record that's going to refresh your
19 recollection on that subject?

20 A No. And again, this is White Pages. I
21 proofread all the Yellow Page stuff we have.
22 This, I never had an opportunity to see.

23 And most people looking for us don't use
24 the White Pages, they would use the Yellow Pages.

1 Q Well, let me ask you about that, because
2 I'm in the White Pages, but I don't have my name
3 and address highlighted like that.

4 Isn't that paid advertising, to have your
5 name kind of --

6 A That's just how they do it.

7 Q -- bolded like that?

8 Okay. That's just how they do it?

9 A Let me see. Yeah, maybe it's not --
10 bolded. I don't know, so --

11 Q You're saying this is -- well, we're
12 on -- just to be exact, we're on page 5 of
13 Exhibit 2.

14 Are you saying that's a free listing or
15 are you paying to have that listing in this
16 business directory?

17 A That's a free listing, as far as I know.

18 Q Okay. But you do have paid listings,
19 right?

20 A Yes.

21 Q Okay. Tell me about how that works.

22 A Well, they give -- they ask what -- they
23 want to sell you a whole page, you know, and I
24 reduce that down to what I can afford.

1 And then there's categories. We do a lot
2 of different things, so we're under a lot of
3 different categories, so I have to pick what
4 categories that will best serve us.

5 And sometimes you pay for, like, a
6 one-inch ad, and then the other listings
7 throughout the book will refer to you that page
8 with the one-inch ad, so they can read a little
9 more.

10 Q I see. And do you do that every year
11 with either AT&T or DEX?

12 A Yeah, it is with DEX. I don't know if
13 they are one in the same. They call it DEX now,
14 that's who I deal with.

15 Q Okay. And how long have you been doing
16 that, Mr. Davies?

17 A Probably about 18 years.

18 Q Okay. And so every year, you advertise
19 through AT&T and/or DEX Yellow Pages; is that --

20 A Yes.

21 Q Okay. So it's not like a couple years go
22 by and you don't? It's just every year you do
23 that?

24 A Every year. I didn't do it for the first

1 11 years I was in business, because I just
2 couldn't afford it. But after a while, we got --
3 you know, we put a little advertisement.

4 Every year they review it, and you can
5 pare it down or you can add to it, whatever you
6 want to do.

7 Q Okay. Do you use any kind of social
8 media for advertising?

9 A No.

10 Q Okay. So you're not on Facebook or
11 Twitter or Yelp or anything like that?

12 A My kids are, so I'm sure they -- whoever
13 my kids know, I'm sure they've talked about our
14 company, but I don't do any formal advertising at
15 all.

16 Q Okay. So no Yelp listing or anything
17 like that?

18 A I think Yelp has our information. They
19 all have ways to find information, but I've never
20 paid for anything with Yelp.

21 Q Okay. Fair enough.

22 And does your company have, like, an
23 internet home page? Can I go look you up on the
24 internet under DaviesHomeServices.com?

1 A Yes.

2 Q Is that the -- did I guess correctly?

3 A Yes.

4 Q It is DaviesHomeServices.com?

5 A Yeah.

6 Q Okay. And do you have an email -- does
7 your company have an e-mail address? So if I
8 wanted to e-mail you something, what would I --
9 what would I use?

10 A It is DaviesHomeServices@Gmail.com.

11 Q And have you had that e-mail address for
12 quite a while? In other words, let's -- 2007
13 through present? Just to --

14 A No, we changed it. When Gmail kind of
15 came to the forefront, we changed it.

16 I would think that's about three or four
17 years ago, I'm not good at judging time at stuff
18 like that.

19 Q Okay. And do you use e-mail for any kind
20 of advertising or marketing?

21 A No. We e-mail with our clients back and
22 forth, but --

23 Q But just contracting details. You're not
24 sending out -- saying, you know, Month of December

1 special on kitchen remodeling, or anything like
2 that?

3 A No, no.

4 Q Okay.

5 A We did it once, and just to our
6 customers, offering something like that, it was a
7 discount.

8 And one person called me, wasn't happy
9 with it, I never did it again. He just said, Take
10 me off your list. But I took every -- I just
11 never did it again.

12 If it bothers somebody, I don't want to
13 do it.

14 Q So what did you do, just kind of an
15 e-mail blast to your entire customer list?

16 A Yeah, I kind of handpicked that list,
17 people I knew, mostly, just to show we were
18 offering a -- it was a sale during the winter.

19 Q Um-hm. So you gave them kind of a winter
20 discount on home remodeling?

21 A Something like that.

22 Q Yeah. Kind of like a \$25 off on your
23 next order of \$100 or more?

24 A They don't have to print it.

1 MR. SMITH: This is via e-mail you're
2 talking about, right?

3 MR. ANDERSON: Yeah.

4 A They don't have to print that.

5 BY MR. ANDERSON:

6 Q Well, I understand you don't have to
7 print an e-mail. But I'm just trying to
8 understand the nature of the offer that you
9 blasted out to your customers.

10 A I think it was 10 percent off, up to \$100
11 on your next remodeling project. It was just to
12 my regular customers.

13 Q Yeah.

14 A And after I got one negative response, I
15 said, That's it, we're never doing that again.

16 I don't think it's right. If it bothers
17 somebody, I'm not going to do it.

18 Q Of course you got one from Grainger and
19 they never did it again, correct?

20 MR. SMITH: Fax.

21 MR. ANDERSON: Yeah, one fax.

22 A I don't know if they ever did it again.
23 I never got one.

24

1 BY MR. ANDERSON:

2 Q Yeah.

3 A But it wasn't personalized to me, it was
4 very general. I could tell it was just to a lot
5 of people.

6 Q And did you consider, before you sent out
7 your customer e-mail blast, that you might be
8 using up their e-mail box limits without their
9 consent?

10 A I'm not aware of an e-mail box limit.

11 Q Okay. Well, some e-mail providers have a
12 limit on the number of megabytes that you can have
13 in your e-mail box.

14 In other words, they won't -- once you
15 fill up your box, you've hit your limit. It's
16 kind of like --

17 A I've never heard of it.

18 Q -- phone minutes.

19 A I've never heard of that.

20 Q Okay.

21 A I never erase any of my e-mails, and I've
22 got thousands of them. It's never been an issue.

23 Q So you still have thousands of e-mails in
24 your inbox, huh?

1 A I do. I save records.

2 Q Yeah, you seem to be kind of a keeper in
3 that respect.

4 MR. ANDERSON: Okay. Let's take a break.
5 I'm just going to look over and see if there
6 is anything else I want to cover.

7 MR. SMITH: Sounds good.

8 THE VIDEOGRAPHER: The time is
9 approximately 12:24 p.m. We're going off the
10 record.

11 (WHEREUPON, a recess was taken,
12 after which the following
13 proceedings were held:)

14 THE VIDEOGRAPHER: The time is
15 approximately 12:37 p.m. We're back on the
16 record.

17 BY MR. ANDERSON:

18 Q Mr. Davies, we are back on the record,
19 and just a few more questions.

20 Do you have a copy -- do you have your
21 business card on you?

22 A No, I don't think I do. I left my big
23 wallet at home.

24 Q Okay. And have you ever put your fax

1 number on your webpage, on the internet?

2 A It might be on that. I don't recall, I
3 didn't set it up. My daughter did the webpage for
4 me. I don't really look at it.

5 Q How long have you had a webpage up?

6 A I think we did it when we were on
7 vacation about three years ago. My daughter said,
8 You need to have a website, so she did it.

9 Q How old is she?

10 A 30.

11 Q 30. Okay. She is apparently more fluent
12 than you, as far as creating webpages?

13 A Everyone is more fluent than I am when it
14 comes to the computer stuff.

15 Q Yeah. And could it be that that webpage
16 has been up there longer than three years?

17 A Yeah, it could be. I have no concept of
18 time, but I think that's when we did it.

19 Q Okay. And I had another question about
20 the setup for your fax number. Again, I'm talking
21 about the fax number 825-3471. Okay?

22 Now, you told me that when you call that
23 number, you're asked to punch in 1, 2 or 3,
24 depending on whether you want to leave a voicemail

1 or send a fax. A least that's what I recall you
2 said.

3 Can you explain to me in a little more
4 detail how that works?

5 A Yes. It's not like that anymore. It's
6 just when we had the issue with some clients
7 trying to get ahold of me, thinking that was our
8 regular phone number, because it's not listed as a
9 fax number, they would call that number.

10 I didn't want those calls to go missed,
11 so I hooked up an answering machine for a few
12 years there. The voicemail would say: You've
13 reached Davies Home Services, please call us back,
14 and they would give the proper number, the 3738.
15 You can leave a message on the answering machine
16 if you care to, or if you want to send a fax,
17 press 1-2-3. The 1-2-3 would prompt the machine
18 to turn on.

19 Q Oh, I see.

20 So 1-2-3 is in fact the code to then turn
21 on the fax machine?

22 A Correct.

23 Q I see.

24 A That being said, just to elaborate a

1 little bit, if someone was faxing to me, the
2 machine would kick on, it would sense there was a
3 fax coming in, and it would automatically go over
4 to the fax machine. So it didn't -- it would hear
5 that fax tone and automatically do it.

6 Q That was my next question. What happens
7 when the sender -- there is no human being who is
8 a sender -- or the human being who is a sender
9 doesn't punch any code in, what happens then?

10 A What I just said.

11 Q Automatically turns on?

12 A Automatically.

13 Q So it automatically turns on the fax
14 machine if no one actually punches the code in,
15 1-2-3?

16 A Correct. And if I'm there and I hear
17 the -- if the phone kicked on and I could hear
18 right away it was a fax tone, I can hit 1-2-3 on
19 my end, and it would send it that much quicker.

20 Q I see. So if you're sitting in the
21 office and you hear the fax tone, you have the
22 ability to punch in 1-2-3 to receive the fax?

23 A It basically relays it from the -- you
24 don't have to wait for the machine to kick on and

1 then sense it and all that. It is just quicker
2 that way.

3 Q And when did you set up this operation?
4 Again, I know it's hard to place it in time.

5 A Yeah, it was years ago, and it was only
6 for a short time we had that set up like that. We
7 no longer have that. We're just strictly a fax
8 line now.

9 But it was back when they had printed in
10 the White Pages, my number, that we got a few
11 calls over the course of the year, that people
12 would finally get ahold of me and say: I call
13 your number and I get a fax tone.

14 So that's when we had to do something
15 about it.

16 Q I see. Well, you can see from Exhibit 1,
17 which is the Grainger fax, that that's dated 2009.
18 So let's try to think back to 2009.

19 Is it likely that you had this procedure,
20 the 1-2-3 code procedure in effect in 2009?

21 A It's possible.

22 Q Well, again, I'm going to have to press
23 you a little further, because almost anything is
24 possible.

1 Do you think that -- is that your best
2 recollection, that that was the procedure you had
3 in place in 2009?

4 A I don't know if we still had that going
5 at that time, because it was four years ago. I
6 think we abandoned the answering machine more than
7 four years ago. But...

8 Q But it kind of makes sense, because at
9 least we know that in that time frame, your fax
10 number was out in the public AT&T directory.

11 So people might have been calling that
12 fax number, correct?

13 A Yes.

14 Q And to kind of intercept those fax
15 numbers, you've told me you set up this procedure,
16 whereby the answering machine says, If you want to
17 leave an answer, do this. But on the other hand,
18 if you want to send me fax, punch in the code
19 1-2-3. Right?

20 A Yes.

21 Q That was the procedure you set up to deal
22 with the fact that you had your fax number out in
23 the public directory, correct?

24 A Yes.

1 Q Is that correct?

2 A Um-hm. Yes.

3 Q Okay. So it's at least possible, if not
4 likely, that that was the procedure that you had,
5 in fact, in 2009 when the Grainger fax came in; is
6 that a fair statement, or not?

7 A I think the problem with the phone book
8 was right before then.

9 Q Uh-huh.

10 A So I think it's very possible that was
11 still in effect at that time.

12 Q Okay. And then you changed that process.
13 And tell me exactly what the change was.

14 A We just eliminated the voicemail. I
15 didn't feel the need to have a separate line
16 anymore. So it might have come when we got a new
17 fax machine, where the fax was an all-in-one
18 thing. I think we just plugged it in and I
19 abandoned the answering machine and just went to
20 voicemail on my 3738 line.

21 Q Okay. So at some point in time, if I
22 were to call that 825-3741, I would no longer get
23 a recording. Instead, it would just automatically
24 trigger the fax machine?

1 A That's correct. That's how it's set up
2 now.

3 Q Okay. So I wouldn't get an option of
4 leaving a voicemail message for you currently?

5 A That is correct.

6 Q Okay. You seem to be a prudent
7 cost-conscious businessman. Are there -- and
8 according -- I wanted to ask you, are there times
9 when you got fax offers, like the Grainger one
10 that gave you an opportunity for a discount or a
11 price off. Did you -- have you ever availed
12 yourself of those kind of price discount
13 offerings?

14 A No. There is a lot of them I don't
15 trust.

16 Q Okay. And why not?

17 A I think they come from foreign countries.
18 I get a lot of stuff offering trips to Florida for
19 \$300, all expenses, everything is covered. I
20 don't trust anything like that.

21 Q Okay. But in the Grainger one that we
22 marked as Exhibit 1, do you see anything on there
23 that's inherently untrustworthy?

24 A No.

1 Q Okay.

2 MR. ANDERSON: Okay. Let's mark this as
3 Exhibit 3 for identification.

4 (Document marked as Davies
5 Exhibit No. 3 for identification)

6 MR. SMITH: Do you have an extra copy
7 there?

8 MR. ANDERSON: Yeah, I think I do. Hang
9 on. Sure. Somewhere in this stack I do.

10 Here you go, Mr. Smith, here is a copy
11 for you (tendering).

12 MR. SMITH: Thank you.

13 BY MR. ANDERSON:

14 Q Okay. You have in front of you what we
15 marked as Exhibit 3 for identification,
16 Mr. Davies. And these are documents that your
17 lawyer produced to us. And they appear to be
18 numbered Davies 001 through 018.

19 Do you recognize these documents?

20 A Yes.

21 Q What do you recognize them as?

22 A They're the proof that the phone book
23 sends you to look at before they go to print.

24 Q Okay. So this is proofs of paid

1 advertising that you have purchased with the phone
2 company?

3 A Yeah. What I mean by proof is, they
4 print it up and then you're checking it for
5 errors.

6 Q Okay.

7 A Before they go to print.

8 Q Okay. If you could go to Davies 001,
9 that's basically page 11 of Exhibit 3, is that an
10 example of an ad proof that you purchased for
11 Davies Home Services?

12 A Is it 011?

13 Q Yes.

14 A Okay.

15 Yes.

16 Q This seems to be a proof for 2008. Do
17 you have proofs -- you told me you store all the
18 records. Do you have proofs for other years?

19 A I do.

20 Q Are they included in this Exhibit 3?
21 Because I don't see them.

22 A There is a variety of them here. It
23 looks like there is 2013. Let's see.

24 This is the year 2000, 2004, 2008.

1 They don't generally change very much
2 from one year to the next.

3 Q And the last one is 2013.

4 But here is my point. I know you told me
5 you do this every year, and I didn't see every
6 year here. Can you explain that?

7 A I might have more.

8 Q Okay.

9 A It doesn't change much, so I probably
10 just went every three or four years. But I
11 probably have more, if not all.

12 Q Okay. Well, I would be grateful if you
13 would preserve every submission that you have made
14 to the telephone companies that would list any
15 kind of phone number or information about your
16 business.

17 And I'd be grateful if you could make
18 copies of those submissions for us, Mr. Davies.

19 A I can look and see what I've got.

20 Q Okay. Well, ultimately, you know, it's
21 for your lawyer to produce those, and so I'm kind
22 of speaking now to your lawyer.

23 But I want to make sure you don't go home
24 and say, Well, it's time to clean up my records,

1 and start tossing stuff.

2 Because I'm going to ask you now to make
3 sure you preserve it. Okay?

4 A If I have them, you can have them.

5 Q Okay. And the same request or admonition
6 goes to any communications you may have had with
7 W.W. Grainger, by way of any type of
8 correspondence or purchase transaction.

9 I would like you to make sure you
10 preserve all of those as well.

11 And then finally, I already said this,
12 but you told me you've got some kind of pile of
13 faxes that you've been collecting over the years.
14 I would like you to preserve that as well.

15 Okay?

16 A Okay.

17 Q Fair enough?

18 A Yes.

19 Q Okay. So that completes my questions
20 today, Mr. Davies. And when we sign off here, the
21 court reporter -- I'm going to ask the court
22 reporter to prepare a transcript that's going to
23 show, in writing, all of the questions I asked,
24 and all of your answers. Okay? Basically,

1 everything that was said on the record.

2 And here is the important part. You, as
3 the witness, have the right to review that
4 transcript and make any corrections if the court
5 reporter, you know, didn't transcribe something
6 correctly that you may have said, or if you just
7 misspoke.

8 So let's just say hypothetically you said
9 2008 and you meant 2009, and now you realize, Holy
10 smoke, you got the wrong year. You can make that
11 kind of correction as well.

12 So I just want to make sure that you are
13 aware that you have the right to do that. And you
14 can talk to your lawyer about whether you want to
15 exercise that right and make any changes.

16 A Okay. Thank you.

17 Q Okay. So that's all I have today.

18 And let me just -- you know, we've had --
19 I've asked you some questions during the day, and
20 sometimes -- and again, I'm not being critical,
21 but you had a hard time with dates or details.

22 Are there any dates or details that have
23 now come to you and you want to add them right
24 now?

1 A I'm not good with dates. I depend on my
2 wife for that kind of stuff. She knows when every
3 kid was born and all the things that happened
4 between, so she can figure out dates for
5 everything. I just don't think that way.

6 The only thing I might have -- I think I
7 said I've been saving faxes for two years. It's
8 probably been much longer, since these go back
9 further than that.

10 Again, I've just been putting them away
11 for years, I guess. But...

12 Q Yeah. And why is that? Is it just
13 because you're kind of a pack rat, or because you
14 just didn't want to take the time to throw them
15 out, or that you had in mind someday you were
16 going to make some point about it?

17 I'm just trying to --

18 A I'm not a --

19 Q It is an unusual thing to do. I'm just
20 trying to understand your motivation.

21 A I guess it just bothered me, and so one
22 day I -- I'd always thrown them away. And one day
23 I said, you know, I should just see how many of
24 these things I get.

1 I just started stacking them here,
2 instead of into this file, it just went into
3 the -- underneath the computer.

4 And before I knew it, the stack was this
5 thick. And it's just crazy that -- and my -- you
6 know, it was brought to my attention that it's
7 illegal to do that. And it's just aggravating me
8 that people keep doing it.

9 Q Yeah. Well, let's be clear. It's not
10 necessarily illegal to be doing that. Let's just
11 be clear. You understand that.

12 But when you said the stack got to this
13 high -- and I know we have a video here, but the
14 court reporter can't record a measurement when you
15 say "this."

16 So in inches, how high is your stack?

17 A Probably two inches.

18 Q Two inches.

19 A And since filing this suit, the new stack
20 is about an inch tall already.

21 Q Okay.

22 A So the problem is getting worse, not
23 better.

24 Q And to the extent there is any blame to

1 be had for that so-called problem, do you
2 acknowledge any blame arising out of the fact that
3 you had your fax number in a public directory for
4 at least a couple years?

5 A The fact that I have a fax number and I
6 let people see it doesn't necessarily mean I want
7 to get faxes -- unsolicited advertisement. I
8 don't want that. So one has nothing to do with
9 the other.

10 I mean, you can get a hold of anybody's
11 phone number these days on the internet. My cell
12 phone, I blocked my cell phone number, so my
13 clients don't get it. I don't want them to call
14 me on my cell phone number. But sometimes they
15 get a hold of it anyway.

16 Q Yeah.

17 A And once they do, they never let it go.

18 Q Well, of course we all get unwanted
19 calls, but the fact that it is necessarily
20 unwanted, does not necessarily mean it is illegal.

21 You understand that, correct?

22 A I understand that.

23 Q Okay.

24 A I just don't want to pay for someone

1 else's advertisement. If they mailed it to me, I
2 wouldn't have given it a second thought.

3 Q Yeah. But if it was such a concern for
4 you, you could have called up Grainger and said:
5 Don't send any more. You could have called up
6 AT&T and said: Absolutely take that number out of
7 the directory.

8 But you didn't do any of that. At
9 least -- well, you didn't do that ever for
10 Grainger. And apparently it took you a year or
11 two for the AT&T directory. Correct?

12 A Only because I wasn't really aware of it
13 until a certain point, and then we did take care
14 of it. But the book's out there, so it's hard to
15 undo it.

16 Q I guess that's true. Once you put your
17 number out there, in this day of electronics, it's
18 hard to undo it.

19 A It is.

20 Q Yeah.

21 MR. ANDERSON: Okay. I think that's all
22 I have.

23 Thank you for your time today.

24 THE WITNESS: You're welcome.

1 MR. SMITH: I don't have any questions.

2 We'll reserve signature.

3 THE VIDEOGRAPHER: The time is

4 12:56 p.m., this concludes today's deposition.

5 We're off the record.

6 (WITNESS EXCUSED)

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1 STATE OF ILLINOIS)

) SS:

2 COUNTY OF C O O K)

3

4 The within and foregoing deposition of
5 the aforementioned witness was taken before
6 MARIA S. WINN, CSR, RPR and CRR, at the place,
7 date and time aforementioned.

8 There were present during the taking of
9 the deposition the previously named counsel.

10 The said witness was first duly sworn and
11 was then examined upon oral interrogatories; the
12 questions and answers were taken down in shorthand
13 by the undersigned, acting as stenographer; and
14 the within and foregoing is a true, accurate and
15 complete record of all of the questions asked of
16 and answers made by the aforementioned witness, at
17 the time and place hereinabove referred to.

18 The signature of the witness was not
19 waived, and the deposition was submitted,
20 pursuant to Rule 30(e) and 32(d)4 of the Rules
21 of Civil Procedure for the United States District
22 Courts, to the deponent per copy of the attached
23 letter.

24

1 The undersigned is not interested in the
2 within case, nor of kin or counsel to any of the
3 parties.

4 In witness whereof, I have hereunto set
5 my hand and seal of office this day, November 19,
6 2013.

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9 _____
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11 CSR No. 084-003784 - Expiration Date: May 31, 2015
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 DAVID DAVIES d/b/a DAVIES HOME)
5 SERVICES, individually and as)
6 the representative of a class of)
7 similarly-situated persons,)

8 Plaintiffs,)

9 vs.)

10) No. 13-cv-03546

11)
12 W.W. GRAINGER, INC., and JOHN)
13 DOES 1-12,)

14 Defendants.)

15)
16 I certify that I have read the foregoing
17 transcript of my deposition given at the time and
18 place aforesaid, consisting of Pages 1 to 107,
19 inclusive, and I do again subscribe and make oath
20 that the same is a true, correct, and complete
21 transcript of my deposition so given as aforesaid,
22 and includes changes, if any, so made by me.

23 _____
24 DAVID DAVIES

25 SUBSCRIBED AND SWORN TO before me this
26 _____ day of _____, 20__.

27 _____
28 Notary Public

[& - account]

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